diction I would have no hesitation in dismissing the charge forthwith or at least in ordering a retrial. However, sitting in the first instance I have to view this case in a different light."

As we have alluded to before this point had been raised in a somewhat different form by learned defence counsel at the commencement of the prosecution case (See *Public Prosecutor* v. *Oh Keng Seng*[2]) and we quote: —

"Counsel for the defence objected to the whole speech being included in the charge on the ground that the defence would not be in a position to know whether the whole speech was alleged to be seditious or only part of it. He said that it was important for the defence to know exactly which parts of the speech were alleged to be seditious and therefore only those parts should be incorporated in the charge. The learned trial judge overruled this objection, as he thought there was nothing improper in annexing the whole speech to the charge, for he said (this point was conceded by both counsel before us) the speech had to be considered as a whole in order to decide whether it was seditious or not. However, at the end of the prosecution case the learned judge directed the Deputy Public Prosecutor to underline (and the Deputy Public Prosecutor complied) the particular passages which the prosecution said were seditious."

From this passage it is abundantly clear that the learned judge was then satisfied with the propriety of the charge.

Let us now examine the specimen charge in *Ratanlal's* Law of Crimes (21st Edition at p. 322) which had apparently persuaded Ong J. to hold that the charge in *Yoh's* case was defective for want of sufficient particulars of a certain sort. The specimen charge reads: —

"That you, on or about the ..... day of ..... at ..... by writing (or spreading) the words (*mention them*) brought (or attempted to bring) into hatred or contempt (or executed or attempted to execute disaffection towards) the Government established by law in India, and thereby committed an offence under section 124A...."

(We have omitted portions irrelevant for our purpose).

We note that though the objection raised by counsel regarding the charge led to the offending passage of appellant's speech (the full translation referred to as Schedule "A" had formed part of the original charge) being underlined by the learned deputy at the instance of the trial judge, the former had narrowed these down to two passages in the first appeal before us.

With respect, we think that Ong J. erred in *Yoh's* case in requiring *the particular words of the law defining what is a seditious tendency* to be set out in the charge, and it follows that we hold that the learned trial judge in this case was equally in error in requiring the same particulars to be set out in the instant appeal. The offending passages *of the speech,* in our considered opinion, (and *Ratanlal's* specimen charge required only the words to be mentioned), had been sufficiently indicated, the appellant was in no way embarrassed or prejudiced in his defence.

What the law requires is that the speech or those parts of the speech alleged to be seditious should be set out in the charge, and then it is for the court to decide having considered all the evidence, whether those words mentioned are seditious.

We should add that the appellant knew full well all the time what had been alleged against him, as his defence indicates.

Since the amendment to the charge, though superfluous, was something within the power of the trial court under section 158 of the Criminal Procedure Code and the requirements of section 159 had also been complied with, the appellant was in no way prejudiced. Accordingly we dismissed the appeal and affirmed the conviction and sentence imposed.

Appeal dismissed.

Solicitors: *Yeap & Co.*

CHUNG SHIN KIAN & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Yusoff J.) April 11, 1980]
[Kuching — Criminal Appeal No. K. 6 of 1979]

Merchandise Marks — Trade description — Tailoring business — Various types of 'Texwood' labels, tags, jeans and jackets found on premises — Products different in texture and weave pattern from actual 'Texwood' samples — Trade Description Act, 1972 (Act 87), ss. 3(1)(a), 4(1), 5, 6, 9 & 16.

Partnership — Offence against Trade Description Act, 1972 — Premises raided — Absence of one partner during raid of premises — Liability of absent partner — Partnership Act, 1971, s. 14 — Interpretation Act, 1967, s. 3.

The facts in this case revealed that acting on information received, the officers from Trade Description Department raided the accused's shop at No. 275 Padungan Road, Kuching. It was a tailor shop and at that time there were ten workers engaged in stitching materials into jeans and jackets. The premises were searched and the officers discovered various types of "Texwood" labels and tags, Texwood jeans and jackets both finished and unfinished. The exhibits were seized and sent to the Chemist Department for analysis.

During the raid only the first accused was present in the shop. The second accused, a partner, was not present but later in the evening he accompanied the first accused to the Department of Trade Description where his statement was recorded.

The charge preferred against both accused was that in the course of their business they did apply a false trade description name "Texwood" to ten pieces of jackets and fifty seven pairs of jeans. The learned magistrate found that garments labelled with "Texwood" were products of Texwood Limited established in Hong Kong. They were also the proprietors of the trade mark registered in Sarawak and that within the meaning of section 4(1) of the Trade Description Act, they were the person by whom the goods were manufactured or produced. Samples of their products were sent to the Chemist for comparison with the seized products. The Chemist's report indicated that both products were different in texture and weave pattern. The learned magistrate found that the description on the seized products was false to a material degree. Both accused were convicted and sentenced for an offence under section 5(1)(a) of Trade Description Act, 1972. They appealed.

Held: (1) dismissing the appeal of the first accused, the learned magistrate had properly directed himself on the facts and law of the case and he had come to the correct conclusion.

(2) allowing the appeal of the second accused, there was no evidence showing that the second accused was implicated in the offence except that he was a partner of the shop. As section 3 of the Trade Description Act does not include every partner in a firm of partnership and section 14 of the Partnership Act 1971 does not provide for joint liability in criminal proceedings, the second accused's appeal is allowed and his conviction quashed.

Cases referred to:-

(1) *Re Debtor* [1926] All E.R. Rep. 337.

(2) *In re A Debtor* [1936] Ch. 237.

MAGISTRATE'S APPEAL.

Chew Pok Oi for the appellants.

Abang Abdul Rahman bin Abang Haji Abdul Rahim (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Yusoff J.: Both accused appeal against conviction and sentence for an offence under section 3(1)(a) of Trade Description Act, 1972, Act 87, whereby they were each sentenced to a fine of $2,000 or three months' imprisonment in default thereof.

Evidence shows that on March 22, 1977 on information received, the officers from Trade Description Department raided the accused's shop at No. 276 Padungan Road, Kuching. It was a tailor shop and at the time there were 10 workers engaged in stitching materials into jeans and jackets. The premises were searched and the officers discovered various types of 'Texwood' labels and tags, Texwood jeans and jackets both finished and unfinished — Exhibits P1 to P11. The exhibits were seized by the officers and later they were sent to the Chemist Department for analysis.

During the raid only accused 1 was present in the shop. Accused 2, a partner, was not present but later in the evening he accompanied accused 1 to the Department of Trade Description where his statement was recorded.

The charge preferred against both accused was that in the course of their business they did apply a false trade description namely 'Texwood' to 10 pieces of jackets (Exhibit P7) and 57 pairs of jeans (Exhibit P8). Some confusion arose during the hearing whether in proving his case the prosecution relied on section 9 of the Act, relating to trade marks containing trade description, or section 16 of the Act which relates to trade description order concerning infringement of trade mark and passing off action. This had developed into lengthy and repeated submissions on both sides. The prosecutor adduced both evidence.

In my view, section 16 of the Act clearly means what it says. The subsisting trade description order granted by the High Court is admissible evidence as conclusive proof of a false trade description where the cause of action was at the instance of the proprietor or registered user of a registered trade mark alleging that his rights in respect of such trade mark have been infringed. It is also my view that reliance cannot be had on this subsisting trade description order as conclusive proof of a false trade description, in a criminal prosecution, under section 3 of the Act. It is imperative that the term 'a false trade description' appearing in section 3 should be interpreted in accordance with sections 4 to 8 of the Act — see subsection (2) of section 3. With this view, there is no necessity for me to decide whether the subsisting order under section 16, granted by the High Court in Malaya (Exhibit P32) extends to proceedings in the courts in Borneo, and for the same reason, reliance on section 9 of the Act was misplaced.

In evidence the learned Magistrate found that garments labelled with 'Texwood' are the products of Texwood Limited established in Hongkong. They are also the proprietors of the trade mark registered in Sarawak (Exhibits P16 and P17) and that within the meaning of section 4(1) of the Act, they are the persons by whom the goods are manufactured or produced. The local agent for the proprietors, Moutrie Limited, sent samples of their products to the Chemist for comparison with Exhibits P7 and P8 and the Chemist's report at Exhibits P21 and P27 indicate that both products were different in texture and weave pattern. This is a sufficient finding under section 5 of the Act that the description on Exhibits P7 and P8 was false to a material degree. Having done so, the learned Magistrate considered section 6 of the Act. He found that the description was affixed to the goods produced as envisaged by the section. In my opinion, these are correct application of the law.

On the defence contention that the offence committed must be in the course of business and that the words import retailing of the goods, the learned Magistrate arrived at the conclusion that business is a wider term than trade. He referred to *Re Debtor*(1) and *In re A Debtor*(2) and held that the word means that an occupation or duty which requires attention is a business.

I am satisfied that the learned Magistrate has properly directed himself on the facts and law of the case and that he has come to the correct conclusion. It was not denied that the accused's occupation was a tailoring business. The premises which were raided were registered as a business enterprise and the number of workers engaged in tailoring their products do not suggest that the garments were for personal use.

For these reasons I am satisfied that the learned Magistrate has correctly called for the defence of accused 1. As accused 1 has not given evidence in rebuttal, he was properly convicted of the offence charged. With regard to accused 2 he was not present during the raid of the premises. There is no evidence showing that he was implicated in the offence except that he was a partner of the shop. The word 'person' in section 3 of the Act includes any body of persons corporate or unincorporate — see Interpretation Act 1967. It does not include every partner in a firm of partnership. Section 14 of the Partnership Act, 1971 provides for joint liability for contracts and recovery of damages and fines, not criminal liability. It is otherwise if the firm was the subject of the charge.

In these circumstances the appeal by the accused 1 is dismissed. His conviction is affirmed. Accused 2's appeal is allowed and his conviction is quashed.

The sentence imposed on the accused 1 is affirmed having regard to the serious nature of the offence, and the need to protect the consumers at large. Order of forfeiture confirmed.

Order accordingly.

Solicitors: *Chan, Jugah, Wan Ullok & Co.*